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SUPREME COURT  
STATE OF WASHINGTON

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FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

In re Personal Restraint Petition of  
MICHAEL MCKIEARNAN,  
Petitioner.

NO. 81102-4  
COA No. 60780-4-I

MOTION FOR DISCRETIONARY  
REVIEW

I. IDENTITY OF MOVING PARTY

Michael McKiearnan, Petitioner, seeks the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Petitioner requests that this Court grant discretionary review. RAP 13.5. On December 31, 2007, the Court of Appeals dismissed McKiearnan's *Personal Restraint Petition*. A copy of the *Order of Dismissal* is attached as Appendix A.

III. FACTS

On May 14, 1987, McKiearnan pled guilty to Robbery in the First Degree for a crime that occurred two months earlier, on March 14, 1987. His *Statement of Defendant on Plea of Guilty* (Appendix B), which is signed by McKiearnan, his attorney, the prosecutor, and the judge, states that the maximum sentence for the crime is "twenty (20) years to life imprisonment." In fact, the maximum penalty was life.

McKiernan was sentenced on May 19, 1987. The *Judgment* (Appendix C) repeats the error from the plea form, stating in Section 3 that the maximum term is “20 yrs. to life.”

#### IV. ARGUMENT

##### A. *Introduction*

The Court of Appeals dismissed McKiernan’s *PRP* based on reasoning that finds no support in the law. To the contrary, the reasons listed by the Court of Appeals for dismissing the petition are contradicted by numerous decisions of this Court and of all three divisions of the Court of Appeals, as McKiernan demonstrates below.

The Court of Appeals dismissal order finds its entire support in four sentences (found on page 3), none of which are followed by citation to any authority. McKiernan examines each sentence in order, followed by the caselaw that contradicts the Court’s reasoning.

##### B. *McKiernan’s Judgment is Invalid on its Face*

The Court’s order starts with a correct statement of law, although the Court apparently makes the statement begrudgingly and then quickly follows it with an incorrect and unsupportable statement of law. However, the Court begins by correctly grounding itself in the law. In the first half of the first sentence of the second full paragraph on page 3 of the *Order*, the Court states:

**Even assuming the error identified by McKiernan is apparent on the face of his judgment and sentence....**

(emphasis supplied).

1 This is a correct statement, although there was no need to “assume” anything. The  
2 face of the judgment lists the date (“3-14-87”) and name (First Degree Robbery) of  
3 McKiernan’s crime of conviction and then—unmistakably--states that the “Maximum  
4 Term” is “20 Yrs. to Life.” This was an obvious error.  
5

6  
7 Prior to the adoption of the SRA, judges imposing sentences set the maximum  
8 term. For individuals sent to prison, the parole board then set the minimum term. For  
9 many Class A offenses, the maximum penalty was 20 years to life. *See* RCW 9.95.010;  
10 RCW 9A.20.020. Robbery in the First Degree was such an offense. In those cases, a  
11 sentencing judge acted entirely within her statutory authority if she imposed a sentence  
12 less than life, as long as it did not drop below twenty years. In other words, “20 to life”  
13 represented a discretionary range.  
14

15  
16 In 1984, the law changed. RCW 9A.20.021 (4). From that time on, the maximum  
17 for first-degree robbery has been set at life. RCW 9A.20.021.  
18

19 From this information alone, it is obvious the maximum sentence is erroneous.  
20 The face of McKiernan’s *Judgment* reveals that his crime was committed after the  
21 change in the law, so it constitutes an error—one that is completely apparent on the face  
22 of the judgment. No further elaboration is necessary.  
23

24  
25 It follows then that McKiernan’s petition is not time barred because the one-year  
26 time limit does not apply to a judgment invalid on its face. RCW 10.73.090; *In re*  
27 *Restraint of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). A judgment and  
28 sentence is invalid on its face if it evinces the invalidity “without further elaboration.”  
29 *Goodwin*, 146 Wn.2d at 866. As this Court has explained: “[T]he relevant question in a  
30

1 criminal case is whether the judgment and sentence is valid on its face, not whether  
2 related documents, such as plea agreements, are valid on their face. Such documents may  
3 be relevant to the question whether a judgment is valid on its face, but only if they  
4 disclose facial invalidity in the judgment and sentence itself.” *In re Restraint of Turay*,  
5 150 Wn.2d 71, 82, 74 P.3d 1194 (2003).  
6  
7

8 The question then becomes whether this error in the *Judgment* identifies a defect  
9 in the guilty plea that merits relief. Here, it does—although the Court of Appeals held  
10 otherwise.  
11

12 C. *McKiearnan’s Judgment Reveals an Involuntary Plea*  
13

14 McKiearnan’s guilty plea contained the same erroneous statement about the  
15 maximum penalty, stating that the maximum was “20 to life.” This constitutes  
16 misinformation about a direct consequence of the plea. However, the Court of Appeals  
17 instead held:  
18

19 **.....there is no showing that the defect is anything other than a clerical error.**  
20  
21 (emphasis supplied).  
22

23 There is no case that counsel—or (apparently) the Court of Appeals could locate--  
24 holding that a mistake regarding the maximum sentence, contained both in the judgment  
25 and in a guilty plea form, constitutes a “clerical error.” To determine whether a “clerical  
26 error” exists, Washington courts use the test under CR 60(a), the civil rule governing  
27 amendment of judgments. *State v. Snapp*, 119 Wash.App. 614, 626, 82 P.3d 252, review  
28 denied, 152 Wash.2d 1028, 101 P.3d 110 (2004). In *Presidential Estates Apartment*  
29  
30

1 *Associates v. Barrett*, 129 Wash.2d 320, 326, 917 P.2d 100 (1996), the Court set forth the  
2 review necessary to determine whether an error is clerical or judicial. The court looks at  
3 whether the judgment embodies the trial court's intention, *as expressed in the record* to  
4 determine if the error is clerical. *Presidential*, 129 Wash.2d at 326, 917 P.2d 100. If it  
5 does, then an amended judgment merely corrects the language to reflect the court's true  
6 intention or adds the language the court inadvertently omitted. *Presidential*, 129 Wash.2d  
7 at 326, 917 P.2d 100. If it does not, then the error is judicial and the court cannot amend  
8 the judgment and sentence. *Presidential*, 129 Wash.2d at 326, 917 P.2d 100.

12 Here, there is no showing that the Court and parties all understood that the correct  
13 maximum was life, not 20 to life, but that the maximum was simply incorrectly  
14 transcribed on the judgment. To the contrary, all of the evidence is that the Court and all  
15 of the parties believed that the maximum could be as little as 20 years.

18 If this error was simply "clerical," then all errors regarding direct consequences of  
19 a guilty plea can be characterized as "clerical." Such a holding overrules a large body of  
20 caselaw, discussed below, but not in the Court of Appeals' order.

22 It is now well-settled that the constitutional validity of a guilty plea turns, in part,  
23 on whether the defendant was informed of "all" the "direct" consequences of his plea.  
24 *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A sentencing consequence is  
25 direct when "the result represents a definite, immediate and largely automatic effect on  
26 the range of the defendant's punishment." *Id.* at 284, quoting *State v. Barton*, 93 Wn.2d  
27 301, 305, 609 P.2d 1353 (1980).

1 When a defendant pleads guilty, he must do so knowingly, voluntarily, and  
2 intelligently. *Henderson v. Morgan*, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 49 L.Ed.2d  
3 108 (1976); *McCarthy v. United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d  
4 418 (1969); *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); *In re Barr*, 102  
5 Wn.2d 265, 269, 684 P.2d 712 (1984); *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d  
6 1032 (1976). Whether a plea satisfies this standard depends primarily on whether the  
7 defendant correctly understood its consequences. *State v. Walsh*, 143 Wn.2d 1, 8, 17  
8 P.3d 591 (2001); *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). See also  
9 CrR 4.2(d); *In re Fonseca*, 132 Wn. App. 464, 132 P.3d 154 (2006) (plea withdrawn  
10 where defendant did not know he was ineligible for DOSA at time he pled guilty).

15 The maximum possible sentence is a “direct” consequence of a guilty plea. *State*  
16 *v. Vensel*, 88 Wn.2d 552, 555, 564 P.2d 326 (1977) (“We believe it is important at the  
17 time a plea of guilty is entered, whether in justice or superior court, that the record show  
18 on its face the plea was entered voluntarily and intelligently, and affirmatively show the  
19 defendant understands the maximum term which may be imposed.”).

22 Misinformation about a direct consequence of a guilty plea is not a clerical error.  
23 Instead, it renders a plea invalid.

25 D. *Misinformation and Materiality*

27 The Court of Appeals next held:

28 **While the information regarding the statutory maximum was not as precise**  
29 **as it could or should have been, McKiernan nevertheless knew that the**  
30 **maximum penalty for the robbery topped out at life. Nothing more is**  
**required by the law.**

1 Contrary to this *ad hoc* reasoning, the critical question (repeatedly set forth in the  
2 law) is not whether McKiernan was aware of the worst case scenario, but rather whether  
3 all of the information regarding the maximum sentence was accurate. Because the  
4 maximum could not be set at 20 years, the information was incorrect.  
5

6 For example, in *State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988), the  
7 defendant was told that he could receive a 20 year sentence, but this Court nevertheless  
8 held the defendant was entitled to withdraw his guilty plea because Miller was unaware  
9 that 20 years was a mandatory minimum sentence requirement. When Miller entered his  
10 guilty plea to first degree murder, he was misinformed by his attorney, who in turn had  
11 been misinformed by the prosecutor, that Miller could receive an exceptional sentence of  
12 less than 20 years. On review, the Supreme Court held that because Miller entered his  
13 plea without knowing the *true sentencing consequences* of that decision, his plea was  
14 involuntary and he was entitled, if he so desired, to withdraw the plea. *Id.* at 536-37.  
15

16 In *State v. Mendoza*, 157 Wn.2d 582, 590-91, 141 P.3d 49 (2006), the defendant  
17 was misinformed about the standard range. The true range was actually lower than stated  
18 on the plea form. In other words, Mendoza was misinformed about the standard range  
19 believing it to be higher than it actually was. This Court held that “a guilty plea may be  
20 deemed involuntary when based on misinformation regarding a direct consequence on the  
21 plea, regardless of whether the actual sentencing range is lower or higher than  
22 anticipated. Absent a showing that the defendant was correctly informed of all of the  
23 direct consequences of his guilty plea, the defendant may move to withdraw the plea.”  
24 157 Wn.2d at 591.  
25  
26  
27  
28  
29  
30

1 McKiearnan was not accurately informed of the sentencing consequences, which  
2 is what the law requires.  
3

4 Next, the Court of Appeals held:

5 **Nor is there any showing that the extraneous language in McKiearnan's plea**  
6 **statement rendered him incapable of making an informed decision about**  
7 **whether or not to plead guilty.**

8 Petitioner has no idea where this standard comes from. Certainly, it is not the  
9 law set forth by this Court. This Court has held many times, contrary to the decision in  
10 this case, that when a defendant is *misinformed* about a direct consequence of a guilty  
11 plea he does not need to demonstrate that the misinformation *materially affected* his  
12 decision to plead guilty. *In re Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004);  
13 *State v. Mendoza, supra* ("In determining whether the plea is constitutionally valid, we  
14 decline to engage in a subjective inquiry into the defendant's risk calculation and the  
15 reasons underlying his or her decision to accept the plea bargain. Accordingly, we adhere  
16 to our precedent establishing that a guilty plea may be deemed involuntary when based  
17 on misinformation regarding a direct consequence on the plea, regardless of whether the  
18 actual sentencing range is lower or higher than anticipated.").

19 According to *Isadore*, a defendant "need not make a special showing of  
20 materiality" in order for misinformation to render a guilty plea invalid, but instead must  
21 show only that the misinformation concerned "a *direct* consequence of [the] guilty plea."  
22 151 Wn.2d at 296 (emphasis added).  
23

24 Here, McKiearnan was misinformed about the maximum penalty—a direct  
25 consequence of his guilty plea. *Vensel, supra*. He was not informed of this mistake prior  
26  
27  
28  
29  
30



1 to sentencing. To the contrary, the mistake was repeated on his *Judgment*. Thus,  
2 McKiearnan's plea was involuntary. McKiearnan's was "incapable" of making an  
3 informed decision because he was misinformed about the consequences of the decision  
4 he was making.  
5

6  
7 The order below does not cite to any caselaw for it's "incapable or making an  
8 informed decision" standard one simple reason: it conflicts with the clear law established  
9 by this Court.  
10

11 E. *Withdrawal of Guilty Plea*

12 Finally, the Court of Appeals incorrectly concluded, based on the erroneous  
13 reasoning described above, that McKiearnan had not established a valid basis for  
14 withdrawing his plea.  
15

16 To the contrary, a defendant may withdraw his guilty plea if it was invalidly  
17 entered or if its enforcement would result in a manifest injustice. *Isadore, supra*; CrR  
18 4.2(f). "An involuntary plea produces a manifest injustice." *Isadore*, 151 Wn.2d at 298.  
19  
20

21 Where a plea agreement is based on misinformation, the defendant may choose  
22 specific enforcement of the agreement or withdrawal of the guilty plea." *Walsh*, 143  
23 Wn.2d at 8-9. *See also In re Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296  
24 (2000). The defendant's choice of remedy controls, unless there are compelling reasons  
25 not to allow that remedy. *Miller*, 110 Wn.2d at 535.  
26  
27

28 McKiearnan chooses withdrawal of his plea. If the State objects, then this Court  
29 should require the State to make a *prima facie* showing of any compelling reason not to  
30 allow this remedy. If the State cannot do so, then this Court should vacate the judgment

1 and remand to Snohomish County Superior Court to allow McKiernan to withdraw his  
2 plea. If the State makes a *prima facie* showing, then the Court should remand for a  
3 hearing on McKiernan's choice of remedy.  
4

5 F. *Standards Governing Discretionary Review*  
6

7 This Court accepts review where a decision of the Court of Appeals conflicts with  
8 decisions of this Court or other decisions of the Court of Appeals. The decision in this  
9 case conflicts with all of the above-cited cases, as well as the following non-exclusive  
10 list.  
11

12 *In re Call*, 144 Wn.2d 315, 28 P.3d 709 (2001);  
13

14 *In re Murillo*, 134 Wash.App. 521, 142 P.3d 615 (2006);  
15

16 *State v. Adams*, 119 Wash.App. 373, 82 P.3d 1195 (2003); and  
17

18 *State v. Olivera-Avila*, 89 Wash.App. 313, 949 P.2d 824 (1997).  
19

20 In addition, the decision conflicts with numerous unpublished decisions from all  
21 three divisions of the Court of Appeals. Review is appropriate.  
22

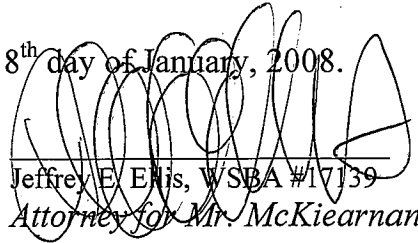
23 V. CONCLUSION  
24

25 This Court has previously embraced its "obligation is to see that the law is carried  
26 out uniformly and justly." *In re Hinton*, 152 Wn.2d 853, 856, 100 P.3d 801 (2004).  
27

28 For reasons unclear to petitioner, the Court of Appeals utterly shirked that  
29 responsibility in this case. Instead of following the clear law, the Court of Appeals  
30 dismissed McKiernan's petition based on reasoning completely untethered to the rule of  
law. There is no support in the law for the reasoning justifying the Court of Appeals

1 decision, which is precisely while none was cited. This Court should grant discretionary  
2 review.  
3

4 DATED this 8<sup>th</sup> day of January, 2008.

5   
6 Jeffrey E. Ellis, WSBA #17139  
7 *Attorney for Mr. McKiernan*

8 Law Offices of Ellis, Holmes  
9 & Witchley, PLLC  
10 705 Second Avenue, Suite 401  
11 Seattle, WA 98104  
12 (206) 262-0300  
13 (206) 262-0335 (fax)  
14 ellis\_jeff@hotmail.com  
15  
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APPENDIX A ~  
ORDER OF DISMISSAL

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

IN THE MATTER OF THE	)	
PERSONAL RESTRAINT OF	)	No. 60780-4-I
	)	
MICHAEL McKIEARNAN,	)	ORDER OF DISMISSAL
	)	
_____ Petitioner.	)	

Michael McKiearnan was identified as the person who assaulted another individual and stole his personal property in March 1987. Thereafter, McKiearnan pleaded guilty to first-degree robbery in Snohomish County No. 87-1-00313-7. The sentencing court ordered McKiearnan confined for a standard range sentence of 36 months. No appeal was ever filed.

McKiearnan now files this personal restraint petition challenging the validity of his guilty plea. McKiearnan contends that he was not adequately advised regarding the length of the statutory maximum. Because he was misinformed about a sentencing consequence of his plea, McKiearnan argues, he should be permitted to withdraw the plea.

Withdrawal of a plea is governed by CrR 4.2(f), which permits a guilty plea to be withdrawn only when "it appears that the withdrawal is necessary to correct a manifest injustice." A "manifest injustice" is "an injustice that is obvious, directly observable, overt, not obscure." State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). Examples of a "manifest injustice" include an involuntary plea or ineffective assistance of counsel. State v. Watson, 63 Wn. App. 854, 857, 822 P.2d 327 (1992).

A defendant's decision to plead guilty must be knowing, intelligent, and voluntary. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). "Due process requires that a guilty plea be knowing, intelligent, and voluntary." In re Pers. Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001). To be knowing and intelligent, the guilty plea must at least be made with a correct understanding of the charge and the consequences of pleading guilty. State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). A guilty plea is not knowingly made when based on misinformation regarding sentencing consequences. State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). One direct consequence of a plea is the applicable sentence range. State v. Moon, 108 Wn. App. 59, 62, 29 P.3d 734 (2001). Another direct consequence of a plea is the statutory maximum. In re Pers. Restraint of Vensel, 88 Wn.2d 552, 555, 564 P.2d 326 (1977).

McKiearnan contends he was misinformed about a sentencing consequence when he was advised that "twenty (20) years to life imprisonment" was the statutory maximum. McKiearnan notes that the plea form he signed and his judgment and sentence both mistakenly state that the maximum penalty for the robbery is twenty years to life. Because the actual maximum punishment is life imprisonment,<sup>1</sup> McKiearnan argues he was clearly misled about the applicable

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<sup>1</sup> First-degree robbery is classified as a class A Felony. RCW 9A.56.200(2). The statutory maximum for a class A felony is life imprisonment. RCW 9A.20.021(1)(a).

maximum sentence. Thus, McKiearnan argues he is entitled to withdraw his guilty plea. This claim fails.


As a general rule, personal restraint petitions must be filed within one-year after the judgment and sentence becomes final. RCW 10.73.090; See also In re Pers. Restraint of Runyan, 121 Wn.2d 432, 450, 853 P.2d 424 (1993) (time requirements of RCW 10.73.090 would not be served if the one-year time limit did not begin to run until the defendant's prior convictions are used in subsequent sentencing proceedings). McKiearnan argues the time limit of RCW 10.73.090 does not apply here because the judgment and sentence is invalid on its face.

Even assuming the error identified by McKiearnan is apparent on the face of his judgment and sentence, there is no showing that the defect is anything other than a clerical error. While the information regarding the statutory maximum was not as precise as it could or should have been, McKiearnan nevertheless knew that the maximum penalty for the robbery topped out at life imprisonment. Nothing more is required by law. Nor is there any showing that the extraneous language in McKiearnan's plea statement rendered him incapable of making an informed decision about whether or not to plead guilty. McKiearnan has not established a valid legal basis for withdrawing his plea.

Now, therefore, it is hereby

ORDERED that this personal restraint petition is dismissed under  
RAP 16.11(b).

Done this 31<sup>st</sup> day of December, 2007.

  
Acting Chief Judge

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COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
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APPENDIX B ~  
STATEMENT OF DEFENDANT ON PLEA OF GUILTY

5-14 87  
CM  
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON,

Plaintiff

vs.

MICHAEL W. MCKIEARNAN,

Defendant

No 87-1-00313-7

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY

1. My true name is Michael W. McKiearnan
2. My age is 18
3. I went through the 11<sup>th</sup> grade in school 6-80 \*
4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Mickey Krom
5. I have been informed and fully understand that I am charged with the crime(s) of First Degree Robbery, RCW 9A.56.200(1)(c)

that the elements of the crime(s) are: (1) On or about March 14, 1987; (2) in Snohomish County; (3) the defendant unlawfully took personal property from the person of Elliott Wright; (4) intending to permanently deprive Elliott Wright of the property; (5) that the taking was against the will of Mr. Wright and the defendant used force against Mr. Wright, to take and retain possession of the property; and that defendant inflicted bodily injury on Mr. Wright at the time he took Mr. Wright's property.

the maximum sentence(s) for which is (are): twenty (20) years to life imprisonment years and \$ 50,000

The standard sentence range for the crime is confinement for at least 36 months and not more than 48 months, based upon the prosecuting attorney's understanding of my criminal history, as stated on the attached plea agreement. If there is any dispute concerning my criminal history, I understand that the court will resolve the dispute at the sentencing hearing.

I have been given a copy of the information.

6. I have been informed and fully understand that, in addition to confinement for the standard range, the court will order me to pay \$50 as a victim's compensation fund assessment, and the court may order me to pay a fine, restitution, court costs, and attorney fees. I understand that the court may also place me on community supervision, impose restrictions on my conduct and order me to perform community service.
7. I have been informed and fully understand that if I fit the definition of RCW 9A.030(12) the court may sentence me as a first time offender instead of giving me a sentence within the standard range. That sentence could include as much as 90 days confinement, two years community supervision, community service, a fine, restitution, court costs, attorney fees, and a \$50 victim compensation fund assessment. Additionally, I understand that the court could place restrictions on my conduct and require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or vocational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

8. I have been informed and fully understand that:
- (a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
  - (b) I have the right to remain silent before and during trial, and I need not testify against myself.
  - (c) I have the right at trial to hear and question witnesses who testify against me.
  - (d) I have the right at trial to testify on my own behalf and to have other witnesses testify for me. These witnesses can be made to appear at no expense to me.
  - (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
  - (f) I have the right to appeal a determination of guilty after a trial.
  - (g) If I plead guilty, I give up the rights in statements 8(a)-(f).

9. I plead guilty to the crime(s) of **First Degree Robbery**

as charged in the

information.

10. I make this plea freely and voluntarily.
11. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
12. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
13. I have been informed and fully understand that the prosecuting attorney will make the recommendations to the court stated on the attached plea agreement form.
14. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed this present offense. I fully understand that if criminal history in addition to that listed in the plea agreement is discovered, both the standard sentence range and the prosecuting attorney's recommendations may increase. Even so I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and prosecuting attorney's recommendation increases.
15. I have been informed and fully understand that the court does not have to follow anyone's recommendation as to sentence. I have been fully informed and understand that the court must impose a sentence within the standard sentence range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard sentence range, either I or the state can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. I also understand that in some cases the court must sentence me to a mandatory minimum term as provided in paragraph 16.

16. I have been informed and fully understand that the crime(s) of **First Degree Robbery**

with which I am charged carries with it a term of total confinement of not less than \_\_\_\_\_ years. I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge.

17. I have been informed and fully understand that the sentence imposed in ~~cases~~ **86-1-0190-5** will run ~~consecutively~~ **concurrently** unless the court finds substantial and compelling reasons to do otherwise.
18. I have been informed and fully understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a Judge to revoke my probation or community supervision or for the Parole Board to revoke my parole.
19. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under State law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
20. The court has asked to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the information. This is my statement.

On or About March 14, 1987, in Jackson County  
I unlawfully took personal property from  
Elliott Wright Against His Will and With

The use of Force to take and retain  
his property.

I have no independent recollection of striking the Victim  
but I have reviewed his statement with my attorney  
and understand that he would testify that I did  
strike him and that he sustained bodily injuries as a  
result. Based on that testimony I believe a jury could  
convict me of the charge and wish to plead guilty to  
take advantage of the plea bargain offered.

21. I am aware that an affidavit of probable cause has been filed in this case. The court may consider this affidavit in deciding whether there is a factual basis for my plea.

22. I have read or have had read to me and fully understand all of the numbered sections above 1 through 21 and have received a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the court.

*Gerard McCamy*  
Deputy Prosecuting Attorney

*Michael W. McKiearnan*  
Defendant

MICHAEL W. MCKIEARNAN

*Mickey Krom*  
Defendant's Lawyer

GERARD MACCAMY

The foregoing statement was read by or to the defendant and signed by the defendant in the presence of his or her attorney and the undersigned Judge in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

Dated this 14 day of May 1987

*[Signature]*  
Judge

I am fluent in the \_\_\_\_\_ language, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Interpreter

APPENDIX C ~  
JUDGMENT AND SENTENCE

3 SUPERIOR COURT OF THE STATE OF WASHINGTON - COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON,  
Plaintiff

MICHAEL W. MCKIEARNAN,  
Defendant

SID NO.: WA13379895

DOCKET

CALENDAR

NO. 87-1-00313-7 ~~EX-108~~ 87-9-08039-1

FILED

JUDGMENT AND SENTENCE  
(Felony)

I. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

1. CURRENT OFFENSE(S): The defendant was found guilty on May 14, 1987 by (plea) (~~jury verdict~~) (~~finding of the court~~) of: (date)  
 Count No.: I Crime: First Degree Robbery  
 RCW 9A.56.200(1)(a) Crime Code \_\_\_\_\_  
 Date of Crime 3/14/87 Incident No. 87-1-00313-7  
 Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
 RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
 Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_  
 Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
 RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
 Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_

[ ] With a special verdict/finding for use of deadly weapon on Count(s):

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

[ ] Additional current offenses are attached in Appendix A.

The defendant is adjudged guilty of the crimes set forth above and in Appendix A.

2. CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
Burglary 2nd	5/87	A	87-1-00313-7	F

[ ] Additional criminal history is attached in Appendix B.

3. SENTENCING DATA:

Count No.	Offender Score	Seriousness Level	Range	Maximum Term
I	1	UX	36-48 Mos.	20 Yrs. to Life

JUDGMENT AND SENTENCE (Felony)

[ ] Additional current offenses sentencing information is attached in Appendix C.

[ ] Following a hearing, the court found real and material facts as set forth in Appendix C.

4. EXCEPTIONAL SENTENCE;

[ ] Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) \_\_\_\_\_. The reasons are set forth in Appendix D.

5. CATEGORY OF OFFENDER: The defendant is:

- (a) ☒ An offender who shall be sentenced to confinement over one year.  
(b) [ ] An offender who shall be sentenced to confinement one year or less.  
(c) [ ] A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12), .120(5)).  
(d) [ ] A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and community will benefit from its use (RCW 9.94A.120(7)(a)).  
(e) [ ] A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

II. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below:

1. Defendant shall pay to the Clerk of this Court:

- (a) ☐ \$ \_\_\_\_\_, Court costs; plus any costs determined after this date.  
(b) ☒ \$ 70.00, Victim assessment; Any such costs will be established by separate order of this court.  
(c) ☒ \_\_\_\_\_, Restitution (with credit for amounts paid by co-defendants);  
☒ The amount and the recipient(s) of the restitution are as established by separate order of this Court;  
(d) ☒ \$ \_\_\_\_\_, Recoupment for attorney's fees;  
(e) [ ] \$ \_\_\_\_\_, Fine;  
(f) [ ] \$ \_\_\_\_\_, Drug enforcement fund;  
(g) [ ] \$ \_\_\_\_\_, Other costs.  
(h) ☒ Payments shall be made in the manner established by Local Rule 2.65 within a period of Three from the date of this order. Release from imprisonment.  
(i) ☒ This Court shall retain jurisdiction over the defendant for a period of ten years to assure payment of the above monetary obligations.  
2. The Court, upon motion of the State, DISMISSES Count(s) \_\_\_\_\_

3. CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows commencing no later than the 19 day of May, 1987 at 1:30 P.M.

36 months for Count No. I  
\_\_\_\_ months for Count No. \_\_\_\_  
\_\_\_\_ months for Count No. \_\_\_\_

- ☒ The terms in Counts No. \_\_\_\_\_ are concurrent for a total term of \_\_\_\_\_ months.  
☐ The terms in Counts No. \_\_\_\_\_ are consecutive for a total term of \_\_\_\_\_ months.  
☒ The sentence herein shall run (concurrently) (~~consecutively~~) with the sentence in Subchapter 4, Sec. 20-82-1-2090-5 (Count(s) or cause number(s))  
☒ Credit is given for (time) ( none ) served.

To be determined by the Judicial Circuit.  
The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- ☐ Appendix A, Additional Current Offenses:  
☐ Appendix B, Additional Criminal History:  
☐ Appendix C, Current Offense(s) Sentencing Information: and  
☐ Appendix D, Reasons for an Exceptional Sentence.

DONE IN OPEN COURT this 19 day of May, 1987.

JUDGE

Presented by:

Andrew Dail  
Deputy Prosecuting Attorney

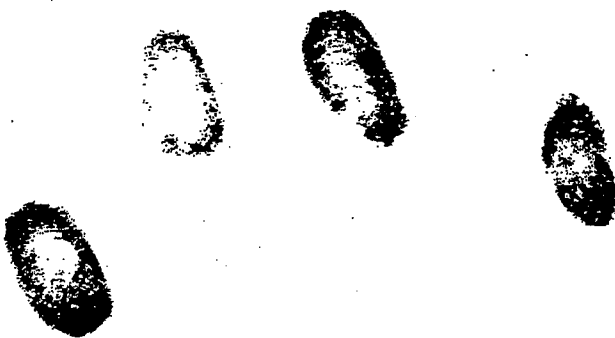
Approved as to form:

Mickey Krom  
HICKEY KROM  
Attorney for Defendant

X M. W. McKiearnan  
MICHAEL W. MCKIEARNAN  
Defendant



FINGERPRINTS



Right Hand  
Fingerprints of:

MICHAEL W. MCKLEARNAN

(Defendant's Signature)

Dated: \_\_\_\_\_

CERTIFICATE

I, Kay D. Anderson, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: \_\_\_\_\_

Kay D. Anderson, Snohomish County Clerk

By: \_\_\_\_\_  
(Deputy Clerk)

JUDGMENT AND SENTENCE (Felony)  
FINGERPRINTS  
Page \_\_\_\_ of \_\_\_\_

Attested by:

Kay D. Anderson, Snohomish County Clerk

By: Cecilia Montanaro  
(Deputy Clerk)

OFFENDER IDENTIFICATION

S.I.D. No. WA13379895

Date of Birth 8/26/68

Sex M

Race W

ORI WA 0310000

OCA 62864

GIN 008717577-01/02

DOA 3/15/87

0895

THE STATE OF WASHINGTON to the Sheriff of the county of Snohomish; state of Washington, and to the Secretary of the Department of Correction, and the Superintendent of the Washington Corrections Center of the state of Washington, GREETING:

WHEREAS MICHAEL W. MCKIFARNAN has been duly convicted of the crime(s) of First Degree Robbery as charged in the Amended/Information filed in the Superior Court of the state of Washington, in and for the county of Snohomish, and judgment has been pronounced against him that he be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.13.120, for the term of 24 months, all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

This is to command you, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification and placement in such correctional facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable Paul D. Hansen Judge of the said Superior Court and the seal thereof, this 19<sup>th</sup> day of May, 1987.

CLERK OF THE SUPERIOR COURT

by: Conrad Martinus  
Deputy Clerk